IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

RSA No. 691 of 2005

Date of decision 23.5.2006

Madan Sharma alias Bhola others …Appellants.

Versus

Smt. Bimla Devi …Respondent.

Coram

The Hon'ble Mr. Justice : **Surjit Singh, Judge.**

Whether approved for reporting?

For the appellants: Mr. Rakesh Jaswal, Advocate.

For respondent : Mr. Tarlok Chauhan, Advocate.

Surjit Singh, Judge (Oral)

Heard and gone through the record.

2. Respondent / plaintiff Bimla Devi, filed a suit for permanent prohibitory injunction restraining the appellants / defendants from interfering in her possession over land, measuring 2 Bighas 4 Biswas, bearing Khasra No. 192, alleging that she and her sisters were the owners of the said land and that prior to her and her sisters, her mother Karmi was its owner. It

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Whether reporters of Local Papers may be allowed to see the Judgment?

was also alleged that a few days prior to the institution of the suit, the appellants tried to construct a house on one side of the suit land and when they were requested not to make any encroachment, they did not pay any heed to such request and threatened to dig foundations and to construct a house.

3. Appellants / defendants contested the suit. They pleaded that earlier two persons named Niku and Chamaru, were in occupation of the suit land as tenants under the mother of the plaintiff and that in the year 1980 they left the village, in which the suit land is situated, after handing over the possession of the suit land to them and that ever-since they had been in possession. They also alleged that they had constructed a house on the said land about 17-18 years back and that no objection was raised by the plaintiff or her sisters or their mother Karmi, when the house was constructed. They also pleaded that they having remained in possession for more than twelve years and their possession being uninterrupted, continuous, hostile and to the knowledge of the plaintiff and other recorded owners, they had acquired title by adverse possession.

4. Trial Court framed various issues, based on the pleadings of the parties, and then tried the suit. Ultimately, the trial Court dismissed the suit, holding that the defendants had become owners by adverse possession. The plaintiff / respondent went in appeal to the Court of the learned District Judge. She challenged the finding returned by the trial Court that the appellants / defendants had acquired title by prescription. The learned District Judge has accepted the appeal by setting aside the finding of the trial Court that the appellants / defendants have acquired title

and returning a finding that they are out of possession and passed a decree of permanent prohibitory injunction.

5. It has been urged by the learned counsel, representing the appellants, that the first appellate Court has not appreciated the evidence in the right perspective and that the evidence on record sufficiently proves that the appellants / defendants are in physical possession of the suit land, even though there may have been some doubt whether they have acquired title by prescription or not. It is also alleged that when the appellants / defendants are in actual possession, relief of injunction could not have been granted in favour of the respondent / plaintiff.

6. I have been taken through the evidence by the learned counsel for the appellants. A look at the copies of entries in the record-of-rights, to which presumption of truth attaches, shows that earlier Chamaru and Niku were in possession of the suit land as tenants, under the mother and mother's sisters of the plaintiff. Ext. P-1 is the copy of the latest Jamabandi, pertaining to the suit land, which is for the year 1996-97. In this Jamabandi the plaintiff and her sisters are recorded as owners in possession of the suit land, which is recorded as '**Barani Abal**'. No portion of it is recorded under any house. The entries in this Jamabandi belie the claim of the of the appellants / defendants that they have raised a house on a portion of the suit land and that that house has been in existence for the last 17-18 years. Admittedly, the respondent / plaintiff and her sisters are the owners of the suit land. Entries in the latest Jamabandi, copy Ext. P-1, to which presumption of truth attaches, show that the possession is with the owners. The appellants / defendants do not claim that they have any legal right to occupy the suit land. Their plea is that when the tenants, named

Chamaru and Niku, left the village in the year 1980, they delivered the possession of the suit land to them. Niku and Chamaru could not have lawfully delivered the possession to the appellants / defendants. The fact remains that the plaintiff and her sisters are lawful owners of the suit property. Possession follows ownership. This is a too well-known principle of jurisprudence. If that is so, it has to be assumed that the plaintiff and her sisters, being the owners, are in possession. This is especially so when the defendants / appellants do not say that they came in possession of the suit land in a lawful manner.

7. In view of the above stated position, the oral evidence of the parties, as regards possession of the suit land, need not be looked into. The first appellate Court, after taking into account the entire evidence, has come to the finding that the possession of the suit land is not with the defendants but with the plaintiff and other recorded co-owners.

8. As a sequel to what has been noticed here-in-above, I find no reason to disagree with the aforesaid finding of fact, recorded by the first appellate Court. No substantial question of law arises. Hence the appeal is dismissed.

May 23, 2006 (BC) **(Surjit Singh)**
Judge